9-1700-10594-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Kuo Chang

Complainant,

v.

Alliant Techsystems, Inc., a Delaware Corporation,

Respondent.

ORDER ON MOTIONS IN LIMINE TO EXCLUDE EXPERT TESTIMONY AND DEFENSES

The above-entitled matter came on before Administrative Law Judge Phyllis A. Reha pursuant to cross motions in limine to exclude expert testimony and Complainant's motion in limine to exclude Respondent's defenses. The record closed on June 9, 2000 upon receipt of Respondent's reply memoranda.

Malcom P. Terry, Esq., Barna, Guzy & Steffen, LTD., 400 Northtown Financial Plaza, 200 Coon Rapids Boulevard, Coon Rapids, Minnesota 55433, represented Kuo Chang ("Chang" or "Complainant"). Roy A. Ginsburg, Esq., and Clifford Anderson, Esq., Dorsey & Whitney, LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402-1498, represented Alliant Techsystems, Inc. ("Alliant" or "Respondent").

Based upon all of the file, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That Respondent's motion in limine to exclude the testimony of Robert Mockenhaupt relating to the genuineness of or financial necessity for the reductions in force is GRANTED.

2. That Respondent's motion in limine to exclude the testimony of Robert Mockenhaupt relating to Toby Warson's alleged ageist comment is DENIED.

3. That Respondent's motion in limine to exclude the testimony of Dr. Benson Rosen is DENIED.

4.That Complainant's motion in limine to exclude Respondent's defenses is DENIED.

5. That Complainant's motion in limine to exclude the testimony of Respondent's experts (Arvey, Haworth, Moncharsh and Nantell) is DENIED.

Dated this ___ day of June, 2000.

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PHYLLIS A. REHA
Administrative Law Judge

MEMORANDUM

Background

Complainant Kuo Chang has brought an age discrimination case under the Minnesota Human Rights Act[1] against his former employer Alliant Techsystems, Inc. ("Alliant"). Chang was a long-term Honeywell employee prior to Honeywell's spin-off of its defense-related business to Alliant in 1990. After the spin-off, Chang worked for Alliant until he was laid off in April of 1995. At the time of his layoff, Chang was 54 years old and held the position of Senior Product Support Engineer.

Between 1990 and 1997, Alliant carried out a series of workforce reductions that resulted in a 62% reduction of Alliant's Minnesota salaried workforce in a five-year period. Alliant went from 3,558 salaried employees in 1990 to 1,350 in 1995.[2] And, in the same five-year period, Alliant's revenue dropped by approximately $458 million. To implement the RIFs, Alliant developed a ranking process with specific criteria for supervisors and managers to use to evaluate and identify possible candidates for layoff. Complainant Chang maintains that the workforce reductions targeted and adversely affected older employees. Alliant argues that its decisions regarding which employees to retain and which to let go were made in a legitimate and non-discriminatory manner based on a fair employee evaluation and ranking system. According to Alliant, age was never a criterion in the selection of any employee for layoff.

Chang originally brought claims of both disparate treatment and disparate impact against Alliant. On July 30, 1999, the Administrative Law Judge dismissed Chang's disparate impact claim in an Order on cross-motions for summary disposition. The only claim remaining for resolution is Chang's disparate treatment claim. This matter is set for hearing beginning July 24, 2000. Both parties have moved to exclude the testimony of expert witnesses, and Chang has moved to exclude Respondent's defenses.

Motions in Limine and Standards for Admissibility of Evidence

Minnesota Rule 1400.7300, subpart 1, provides that the Administrative Law Judge "may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. … Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded." The rule is silent on the specific issue of the admissibility of expert testimony. Where the rules governing contested case proceedings are silent, the ALJ shall apply the Rules of Civil Procedure "to the extent that it is determined appropriate in order to provide a fair and expeditious proceeding."[3]

Minnesota Rule of Evidence 702 governs the admission of scientific or technical expert testimony. This rule, which is identical to Federal Rule of Evidence 702, provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

And Minn. R. Evid. 703(a) requires that the facts or data that experts rely upon be either admissible or "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences …"

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[4], the United States Supreme Court outlined the method by which trial judges should analyze proposed expert testimony under Federal Rule of Evidence 702. The Court interpreted Rule 702 as imposing a special obligation on trial judges to ensure that all scientific testimony is not only relevant, but reliable.[5] Specifically, the Court held that to be admissible, expert testimony relating to scientific knowledge must be "ground[ed] in the methods of and procedures of science" and amount to more than "subjective belief or unsupported speculation."[6] The Court set forth four factors for determining whether "scientific" expert testimony is relevant and reliable. Those factors are: (1) whether the underlying theory or technique can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) whether the technique has a known or knowable rate of error; and (4) whether the theory or technique is generally accepted in the relevant community.[7] In *Kumho Tire Co., Ltd. v. Carmichael*[8], the U.S. Supreme Court clarified that the *Daubert* "gatekeeping" obligation applies not only to scientific testimony, but to expert testimony based on "technical" or other "specialized knowledge" as well. But the Court emphasized that the test of reliability articulated in *Daubert* is "flexible", and that the list of specific factors neither necessarily nor exclusively applies to all experts in every case.[9] That is, the factors are meant to be helpful, not definitive.[10]

The Minnesota Supreme Court has yet to determine the impact of *Daubert* on admissibility of scientific evidence in Minnesota. Instead, Minnesota case law largely incorporates the standards laid out in Rules 702 and 703. Expert testimony "generally is admissible if: (1) it assists the trier of fact, (2) it has a reasonable basis, (3) it is relevant, and (4) its probative value outweighs its potential for unfair prejudice."[11] It is the court's responsibility to "scrutinize the proffered expert testimony as it would other evidence and exclude it where irrelevant, confusing, or otherwise unhelpful."[12] If the expert testimony will be "helpful to the jury in fulfilling its responsibilities", the evidence may be admitted.[13]

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Alliant's Motion in Limine to Exclude Mockenhaupt's Testimony

Alliant argues that the testimony of former Honeywell executive Robert Mockenhaupt should be excluded as irrelevant. According to Alliant, Chang seeks to introduce Mockenhaupt's testimony to prove that the RIFs were not genuine and to establish that former Alliant CEO Toby Warson made an ageist comment. Specifically, in his deposition, Mockenhaupt stated that cuts in defense spending predominantly resulted in base closures and reductions in service personnel. But, according to Mockenhaupt, defense spending on some military products actually increased in the 1990-1995 time period. Mockenhaupt did not state whether sales of Alliant's products increased. Alliant points out that in the July 1999 Order on the summary disposition motions, the Administrative Law Judge found the RIFs to be genuine and Mockenhaupt's general statements insufficient to support a claim that the RIFs were a sham. Finding that the RIFs were genuine meant that Complainant had to put forward "additional evidence" of age discrimination in order to make a prima facie case. Alliant asserts that this

determination is now the "law of the case" and that Chang cannot continue to challenge the genuineness of the RIFs.

Alliant also argues that Mockenhaupt's testimony with respect to the alleged ageist comment by Toby Warson is irrelevant and should be excluded. Specifically, Mockenhaupt testified in a 1990 deposition for another case that Toby Warson stated in a meeting that older employees should be targeted in the 1990 layoffs to increase cost reduction. Alliant argues that because this comment was allegedly made before Alliant was even created and five years before Chang was laid-off, it is a stray comment by a non-decisionmaker and is immaterial and unrelated to the decision to layoff Chang. In addition, Alliant points out that in the Order for summary disposition the ALJ found that, while the alleged Warson comment and other "common evidence" were sufficient to establish the "additional evidence" required to make a prima facie case, they were insufficient to support a finding of pretext for intentional age discrimination.[14]

Chang argues that Mockenhaupt's testimony with respect to munitions procurement is relevant because it goes to the heart of Alliant's defense that it was required to layoff people due to cuts in defense spending. Chang contends that whether defense cuts actually decreased Alliant's profits and business forcing Alliant to layoff people goes to the issue of pretext in this litigation. And Chang asserts that, if allowed to testify, Mockenhaupt will establish that the workforce reductions were not financially necessary because United States Defense Department budget cuts were predominantly in personnel and base closings, not in munitions procurement.

The Minnesota Supreme Court in *Dietrich v. Canadian Pacific Ltd.*[15], adopted the following standard articulated by the Sixth Circuit to determine whether a genuine reduction-in-force has occurred:

> [a] work force reduction situation occurs when business considerations cause an employer to eliminate one or more positions within the company. An employee is not eliminated as part of a work force reduction when he or she is replaced after his or her discharge. However, a person is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work. A person is replaced only when another person is hired or reassigned to perform the plaintiff's duties.[16]

In *Dietrich*, the court determined that the employer's reorganization scheme, which resulted in the elimination of 32 positions during a four month period, was "well substantiated as to plan and purpose" and was a bona fide reduction in force.[17]

It is undisputed that Alliant carried out a series of workforce reductions between 1990-1995. To implement the RIFs, Alliant developed a ranking process with specific criteria for supervisors and managers to use to evaluate and identify possible candidates for layoff. As a result of voluntary retirements, attrition and involuntary layoffs, Alliant's workforce declined 62% from 3,558 Minnesota salaried employees in 1990 to 1,851 such employees by the end of 1994. In the end, approximately 2,200 employees were not replaced. Such a wide-ranging and well-documented elimination of positions at Alliant qualifies as a genuine reduction in force under the standard outlined in *Dietrich*.

Moreover, at the time of the summary disposition motions, Chang challenged the legitimacy of the RIFs and offered Mockenhaupt's general statements that procurement of some munitions increased during 1990-1995 to support his claim that Alliant was financially healthy and that the RIFs were unnecessary and a "sham". Within the context of analyzing whether the Complainant had put forth a prima facie case, the ALJ determined that Mockenhaupt's general statements regarding munitions procurement were insufficient to support Complainant's claim that the RIFs were a sham. Accordingly, the ALJ concluded that since Chang's termination took place in a genuine RIF context, Chang was required to put forth "additional evidence" that age was a factor in his termination in order to establish a prima facie case.[18] Nothing in Chang's recent submissions, including the recent discovery order in *Novak*[19], persuades the ALJ that this decision was erroneous. Discovery in this matter has long since closed and Mockenhaupt's general statements regarding the market for Alliant's products and defense spending does not contradict the undisputed evidence that Alliant eliminated over 2,000 positions in a five-year period. Moreover, there is no requirement that a business must first "founder on economic shoals" before embarking on a plan to downsize.[20] Because Mockenhaupt's testimony with respect to ordnance procurement and the financial necessity for the RIFs is irrelevant and unhelpful, and because the ALJ has already determined as a matter of law that Chang was laid off in the context of a genuine reduction in force, Alliant's motion in limine is granted.

The core issue remaining in this action is whether Alliant's proffered reason for laying off Chang was merely a pretext for age discrimination. The ALJ's conclusion that the RIFs were legitimate and genuine does not foreclose Chang from arguing that the RIFs were executed in a age-discriminatory manner and manipulated to target older employees. Nor is Chang prevented from fully pursuing and proving his claim that Alliant's stated reasons for selecting him for layoff were pretextual and that the real reason was intentional age discrimination.

Alliant's other motion in limine to exclude Mockenhaupt's testimony regarding the alleged ageist comment by former Alliant CEO Toby Warson is denied. Standing alone Mockenhaupt's testimony regarding a non-contemporaneous comment by a non-decisionmaker (Warson) is insufficient to support a finding of pretext because it lacks the required causal relationship to the specific decisional process that lead to Chang's termination.[21] Yet, when coupled with Chang's statistical data, ranking process evidence and other "common evidence", the alleged comment by Warson is probative of a possible ageist atmosphere at Alliant.[22] Contrary to Alliant's argument in note 2 of its Reply Memorandum in support of this motion, Chang's prima facie case evidence (including the alleged Warson comment) is relevant to the determination of pretext. Although the presumption of discrimination "drops out of the picture" once the employer meets its burden of production under *McDonnell Douglas*, the trier of fact may still consider the evidence establishing plaintiff's prima facie case, and inferences properly drawn therefrom, on the issue of whether the employer's explanation is pretextual.[23] And Alliant's counsel can certainly challenge the weight and credibility to be given Mockenhaupt's testimony on cross-examination. Given the more relaxed admissibility threshold governing administrative hearings and Minnesota case law holdings that expert testimony should be allowed if it assists the fact finder and is relevant and probative, the ALJ concludes that Mockenhaupt's testimony regarding the alleged ageist comment by Warson should not be excluded.

II. Alliant's Motion in Limine to Exclude the Testimony of Dr. Benson Rosen

Alliant argues that Dr. Benson Rosen's general opinions regarding age stereotyping and the possible existence of an ageist culture at Alliant are speculative, vague and irrelevant. Alliant contends that because Dr. Rosen has nothing relevant or reliable to say about whether Chang's specific managers intentionally discriminated against him, Dr. Rosen's testimony and reports should be excluded. According to Alliant, Dr. Rosen's opinion that Alliant *may* have had an ageist culture is based on four stray remarks that allegedly occurred over a five-year period. Alliant contends that Dr. Rosen's unscientific premise that four stray remarks provide sufficient evidence to infer potential age bias is exactly the type of unreliable and speculative testimony *Daubert* condemns. Likewise, Alliant argues that Dr. Rosen's opinions concerning the ranking criteria used by Alliant managers is irrelevant. According to Alliant, Dr. Rosen's opinion is simply that age stereotyping may have influenced the rankings. But Dr. Rosen has nothing specific to say regarding how any given criteria affected Chang's ranking. And finally, Alliant argues that Dr. Rosen should not be allowed to offer the statistical opinions of David Peterson to support his analysis that Alliant might have had an ageist culture. Alliant asserts that what Dr. Rosen has to say about statistics is irrelevant, unreliable and lacks foundation.

Alliant's motion in limine to exclude the testimony of Dr. Rosen is denied. Dr. Rosen is an industrial psychologist and professor at the University of North Carolina. Dr. Rosen has conducted studies and published research in the areas of industrial psychology, human resources, stereotyping and age discrimination. Because age discrimination may arise from an unconscious application of stereotyped notions of older employees' abilities, the ALJ concludes that Dr. Rosen's general testimony is probative of age stereotyping and may assist the ALJ in evaluating the evidence.[24] And the ALJ is not persuaded by Alliant's argument that Dr. Rosen's testimony should be excluded because it lacks a scientific basis. Social science research in areas such as industrial psychology, will not have the exactness of hard science methodologies. Alliant can challenge Dr. Rosen's opinions on cross-examination and respond to Dr. Rosen's claims by way of Dr. Arvey's observations. In addition, the ALJ will not at this time preclude Dr. Rosen from referring to or testifying about his understanding of the statistical evidence presented in this matter. Further evidentiary rulings will be deferred until the hearing upon proper objection where the factual context will make concerns regarding relevance, reliability and foundation more apparent.

III. Chang's Motion in Limine to Preclude Alliant's Defenses

Chang argues that because Alliant consistently blocked Chang's discovery requests to obtain Alliant's sales information, Alliant should be precluded from arguing that financial necessity required it to conduct RIFs and layoff workers. Likewise, Chang argues that Alliant should be precluded from arguing that Chang was let go in part due to his "poor task releases" because Alliant objected to all discovery requests for copies of Chang's task releases. Since Alliant failed to produce requested discovery related to financial necessity and Chang's task releases, Chang contends that any evidence or testimony supporting either defense should be excluded.

Alliant argues that the ALJ has already determined that the RIFs were genuine and legitimate. Because this issue has already been resolved in Alliant's favor, Alliant asserts that Chang's motion to preclude Alliant's defense regarding the financial necessity of the RIFs is

frivolous. And with respect to Chang's claim that Alliant failed to produce discovery regarding Chang's task releases, Alliant maintains that it has not withheld evidence and that it responded to all discovery requests. According to Alliant, nothing about its conduct during discovery precludes it from asserting defenses to Chang's claims. Specifically, Alliant produced annual reports, deposition testimony, ranking sheets, and what task releases it could find.

Chang's motion to preclude Alliant's defenses is denied. Chang has failed to demonstrate that Alliant engaged in conduct that warrants the extreme measure of precluding Alliant's defenses. There have been motions to compel in this case, but no evidence that Alliant failed to disclose or produce relevant evidence in violation of a discovery order. Moreover, Alliant's evidence on the basis for its RIFs and the basis for Chang's ranking is central to the case and must be presented in order to properly decide whether Chang's layoff was the product of intentional age discrimination. Chang can always object during the hearing if Alliant attempts to introduce evidence that Chang believes was not produced to him, and the ALJ will consider Chang's argument at that time. The ALJ has the authority, for example, to prohibit a party who has failed to reasonably comply with a discovery order from introducing designated matters in evidence.[25] Alliant's request for sanctions, which are allowed under Minn. Rule 1400.7050, Subp. 2, is denied.

IV. Chang's Motion to Preclude Alliant's Experts' Testimony

Chang argues that the testimony of Alliant's human resources expert, statistical expert, vocational expert and accountant should all be precluded as not scientifically reliable under *Daubert*. Specifically, Chang maintains that: (1) Alliant's human resources expert (Dr. Richard Arvey) includes in his expert report assertions that are not scientifically reliable under *Daubert*; (2) Alliant's expert statistician (Dr. Joan Haworth) uses an inappropriate average age statistical analysis, uses a hypothetical probability analysis that fails to control for certain variables, and attempts to testify to the ultimate factual and legal conclusions; (3) Alliant's vocational expert's (Ms. Jane Moncharsh) prospective income analysis lacks a factual basis and fails to establish that Chang removed himself from the labor market; and (4) Alliant's accountant's (Dr. Timothy Nantel) damage analysis fails to look at Chang's actual damages and instead relies on Moncharsh's flawed prospective income analysis.

Dr. Richard Arvey – According to Chang, Dr. Arvey is not qualified to render an opinion regarding workforce reduction because his expertise is related to the "selection process" of hiring people, not firing people or reductions in force. Moreover, Dr. Arvey did not interview or speak with anyone at Alliant to support his position. Chang also contends that Dr. Arvey is not qualified to give expert testimony on performance appraisals because his expertise is limited to studies he conducted while a graduate student. In addition, Chang maintains that Dr. Arvey's testimony should be excluded because it is conclusory. Chang cites to 18 specific conclusory statements in Dr. Arvey's report that he believes should be excluded (e.g., "the workforce reduction processes used by Alliant to layoff the Complainant were legitimate and appropriate.") Chang points to similar statements by Dr. Arvey that were excluded as conclusory by Magistrate Judge Noel in *Burns v. Control Data*[26], an age discrimination case brought under the Age Discrimination in Employment Act on the grounds that they were unhelpful to the jury and that Dr. Arvey was no more qualified to infer the conclusions than the jury. And finally, Chang argues that Dr. Arvey's opinions regarding Alliant's economic condition should be excluded because Dr. Arvey has no background in

economics and is not qualified to do an economic analysis of Alliant or render opinions on defense spending.

Chang's motion in limine with respect to Dr. Arvey is denied. Dr. Arvey is an industrial psychologist and a professor at the Carlson School of Management, where he teaches Human Resources Management. Dr. Arvey has conducted studies and published research and reviews on potential biases in employee selection and performance evaluations. The ALJ concludes that Dr. Arvey's testimony is probative of age stereotyping and may assist the ALJ in evaluating the evidence. And the ALJ finds unpersuasive Chang's argument that "conclusory assertions" in Dr. Arvey's report must be excluded. Because this is not a jury matter, the risk of confusion is minimal and the ALJ can decide on her own in the context of the testimony presented whether Dr. Arvey's opinions are helpful. And finally, Chang's request that Dr. Arvey's testimony relating to Alliant's financial condition be excluded is denied at this time. The ALJ has already found that Chang was laid off in the context of a genuine reduction in force. It is the ALJ's understanding that Dr. Arvey is not being offered as an expert on Alliant's finances or the economics of the defense industry. Rather, Alliant maintains that Dr. Arvey simply relied on evidence that Alliant was under financial stress in the course of forming his opinion regarding Alliant's layoff process. Testimony from Dr. Arvey regarding Alliant's economic condition that is intended only as background information to lay foundation for analyzing Chang's layoff is relevant and will be allowed. The ALJ will, however, entertain evidentiary objections from Chang at the hearing if it appears that Dr. Arvey is testifying in more detail about Alliant's financial condition and defense industry economics. Just as the ALJ has precluded Chang's expert from testifying as to financial necessity for the RIFs, the ALJ will not allow Alliant's experts to go much beyond the background information necessary to explain the context in which Chang was laid off.

Dr. Joan Haworth – Chang argues that Dr. Haworth is not competent to testify as to cuts in defense spending as she has no expertise in this area. Also, Chang maintains that Dr. Haworth's testimony regarding average age analysis of the remaining workforce should be excluded as not relevant and not helpful to the fact finder. Chang claims that average age analyses of remaining workforces in RIFs (or bottom line analyses) have been rejected by courts.[27] Moreover, Chang contends that Dr. Haworth failed to analyze the laid-off workforce to determine age related adverse impact. And because Dr. Haworth's average age analysis is company-wide and did not break down statistics by department or job-family, Chang maintains that Dr. Haworth's testimony provides no useful information as to whether older workers were terminated disproportionately. Chang further asserts that Dr. Haworth's testimony regarding Alliant's layoff ranking and review process should be excluded because Dr. Haworth has no expertise or practical experience in this area. And Chang contends that Dr. Haworth's logistic regression analysis should be excluded as scientifically unreliable. This analysis attempts to calculate the probability of layoff by looking at variables such as facility closure, time since last degree, percent salary increase, voluntary request for layoff, and cross-offs. Chang argues that this analysis provides no useable information about the age of the people laid off, is hypothetical, and irrelevant. Finally, Chang maintains that Dr. Haworth's report should be excluded based on the fact that she incorporated suggestions from Alliant's counsel into the final draft. According to Chang, Dr. Haworth's report is a product of Alliant's attorneys and should be found inadmissible.

Dr. Haworth is a labor economist and her contemplated testimony regarding the circumstances surrounding Chang's layoff appears reliable, relevant, and likely to assist the ALJ in understanding the evidence. Generally, Chang arguments challenging Dr. Haworth's methods and conclusions, including her average age analysis and logistic regression analysis, go to the weight to be given her testimony, not to admissibility. As such, Chang may challenge Dr. Haworth's opinions on cross-examination. Chang's motion in limine is denied. The ALJ, however, will not let permit Dr. Haworth to testify in too great a detail about cuts in defense industry spending or the financial necessity for the RIFs. As stated above in relation to Dr. Arvey's testimony, because the ALJ has already determined that Chang was laid off during a genuine reduction in force, testimony regarding the financial necessity for the RIFs that goes beyond general background information necessary to lay foundation for analyzing Chang's layoff is irrelevant. Finally, the ALJ will not exclude Dr. Haworth's report on the grounds that it is the product of Alliant's attorneys' legal theories. The ALJ is not persuaded that Dr. Haworth's incorporation of Alliant's counsel's suggestions into her report renders her report inadmissible.

Ms. Jane Moncharsh – Ms. Moncharsh is Alliant's vocational expert who has determined that Chang has been underemployed since his layoff. Chang argues that Ms. Moncharsh's testimony should be excluded because she did not interview Chang, she does not understand what type of engineering work he was doing for Alliant, and she did not analyze the difficulties involved in transferring from a defense industry field to a commercial industry field. According to Chang, Ms. Moncharsh's report is merely theoretical and not useful. And Chang contends that Ms. Moncharsh has failed to show how Chang removed himself from the workforce and what more he could have done to find employment.

Chang's motion in limine to exclude Ms. Moncharsh's testimony is denied. The ALJ finds Ms. Moncharsh's contemplated testimony regarding her labor market analysis and Chang's employability to be relevant to the issue of damages and likely to assist the ALJ in understanding the evidence. As with Dr. Haworth above, the ALJ finds that Chang's arguments in support of excluding Ms. Moncharsh's testimony go more to the weight and credibility of her testimony, and not to admissibility. Chang's criticisms with Ms. Moncharsh's methodology and opinions may be properly raised on cross-examination, but are not grounds to grant a motion in limine.

Dr. Timothy Nantell – Chang argues that the testimony of Alliant's damages expert Dr. Timothy Nantell should be excluded for four reasons: (1) Nantell relies on Moncharsh's testimony to calculate damages; (2) Nantell has arbitrarily chosen the time frame to use to determine what pay increases Chang would have received; (3) Nantell has reduced Chang's damages with a mortality factor that has no basis; and (4) Nantell has applied an inappropriate discount rate to Complainant's damages.

The ALJ again finds that these arguments by Chang go to the weight that should be given Dr. Nantell's testimony, and not to admissibility. Dr. Nantell's contemplated testimony appears relevant, reliable, and likely to assist the ALJ in determining the issue of damages. Chang's motion in limine with respect to Dr. Nantell's testimony is denied.

P.A.R.

[1] Minn. Stat. § 363.03, subd. 1(2)(b) (1996) (providing that it is an unfair employment practice for an employer to discharge an employee because of age).
[2] Anderson Aff., Ex. A at 2-8 (submitted in support of summary disposition motion).
[3] Minn. Rule 1400.6600.
[4] 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).
[5] Id. at 589.
[6] Id. at 590.
[7] Id. at 593-94.
[8] 526 U.S. 137, 147, 119 S.Ct. 1167, 1174 (1999).
[9] Id. at 141.
[10] Id. at 151.
[11] State v. Jensen, 482 N.W.2d 238, 239 (Minn. App. 1992), *rev. denied* (Minn. May 15, 1992), *citing*, State v. Schwartz, 447 N.W.2d 422, 424 (Minn. 1989).
[12] State v. Wolf, 605 N.W.2d 381, 384 (Minn. 2000), *quoting*, State v. Miles, 585 N.W.2d 368, 371 (Minn. 1998).
[13] State v. Miles, 585 N.W.2d 368, 371 (Minn. 1998).
[14] *See*, Order on Motions for Summary Disposition at 11.
[15] 536 N.W.2d 319 (Minn. 1995).
[16] Id. at 324, *quoting*, Barnes v. GenCorp, Inc., 896 F.2d 1457, 1465 (6th Cir.), *cert. denied*, 498 U.S. 878, 111 S.Ct. 211, 112 L.Ed. 171 (1990).
[17] Id. at 327.
[18] Order on Motions for Summary Disposition at 8-9, *citing Dietrich* 536 N.W.2d at 324.
[19] Novak v. Alliant Techsystems, Inc., Civil No. 98-1391 (May 16, 2000)(order compelling Alliant to produce federal tax returns).
[20] Bashara v. Black Hills Corporation, 26 F.3d 820, 824 (8th Cir. 1994).
[21] *See*, Order on Motions for Summary Disposition at 11.
[22] *See*, Order on Motions for Summary Disposition at 13-14.
[23] Reeves v. Sanderson Plumbing Products, Inc., ___ S.Ct. ___, 2000 WL 743663 at *6 (U.S. June 12, 2000), *quoting* Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-253, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).
[24] *See*, Flavel et al v. Svedala Industries, Inc., 875 F.Supp. 550, 558 (E.D. Wisc. 1994).
[25] Minn. Rule 1400.6700, Subp. 3.
[26] Civ. No. 4-96-41 (D.Minn. 1997).
[27] *Citing*, Leftwich v. Harris-Stowe State College, 702 F.2d 686, 691 (8th Cir. 1983). *But see*, EEOC v. McDonnell Douglas Corp., 191 F.3d 948, 952 (8th Cir. 1999) (“an important statistic to consider in the RIF context is the difference in the percentage of older employees in the work force before and after the RIF.”)